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Easton Area School Board  
1801 Bushkill Drive  
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Dear School Director:

My wife and I have been informed that the school district's solicitor is preparing a resolution for you to approve the use of eminent domain to take our land by force. Please consider the facts compiled in this letter before deciding how to cast your vote on this highly controversial matter. We urge you to vote against eminent domain and then submit a new stormwater plan to the township, i.e. use the existing drainage system (see Plan #1 in the Appendix).

Recall that my wife and I filed a land use appeal against Palmer Township on April 22, 2019. We were required to file the appeal within 30 days of Superintendent Reinhart's decision to accept all of the township's conditions which he did on March 26. On May 21 the school district intervened in our land use appeal – inexplicably taking the side of the township.

In an effort to avoid further litigation, a judge ordered all of the decision makers and engineers to appear in court for a settlement conference on December 6. Unfortunately the meeting did not resolve the dispute. No one wants to be in litigation for several more years but that is the path we are all on at this time.

Here is a brief summary of the stalemate as I see it:

The school district wants to demolish a 70+ year old elementary school and then a build a new and smaller school on the same site in Palmer Township. The project

includes a new stormwater retention basin such that stormwater runoff from the school district's property will be reduced by at least 52%.

The township wants to obtain an easement on my property and destroy my yard in order to construct a new million-dollar stormwater drainage system in my residential development. In exchange for a permit to build the new elementary school, the township wants the school district to obtain the easement, build the new stormwater system and then immediately "dedicate" the easement and all new infrastructure to the township. The residents of the Easton Area School District are expected to pay for everything. The township refuses to settle for anything less.

My wife and I refuse to sell the easement, for any amount of money, while our land use appeal is still pending, and we will never sell the easement if our land use appeal is successful.

There is an alternative stormwater plan<sup>1</sup> that does not require any easements, does not require the construction of any off-site drainage infrastructure and does not violate any of the township's ordinances. The alternative is to allow the school district to continue using the existing drainage system at the dramatically reduced stormwater runoff rates. Both my engineer and the school district's engineer support it and the township's engineer has never formally rejected it. The school district refuses to submit this alternative plan to the township.

Although battle lines have been drawn, all sides agree that no one benefits from an ongoing legal dispute. Litigation and the delays associated with the construction of a \$33.5 million dollar elementary school are reportedly costing the school district \$700,000 per year or \$2,000 per DAY. Litigation is NOT a burden to the township, however, because the school district has agreed to pay all the township's legal expenses - including the township's legal defense of actions taken by the township's supervisors. Litigation is expected to cost me and my wife at least \$30,000 and could easily reach \$100,000 if the case goes to Commonwealth Court or possibly the Supreme Court of Pennsylvania.

My wife and I resent the fact that our school district has been threatening legal action for nearly two years now. The constant threats are very stressful at times and always fatiguing – not to mention a severe financial burden. Nevertheless, we recognize that the township is the root cause of the problem – not the school district, and we have attempted to resolve this dispute in a timely manner by taking prompt legal action against the township – not the school district.

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I do not know why township leaders refuse to yield or why the school district refuses to submit a new stormwater plan to the township, but I do know why my wife and I refuse to sell the easement and I wish to share our reasoning with you now.

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<sup>1</sup> Please see the Appendix for detailed information about stormwater plans.

Granted, we did offer to sell the easement for \$115,000 in October of 2018 – an offer<sup>2</sup> that remained on the table for six months. At that time we were uncertain of the strength of our legal position. The school district would NOT share with us the legal justification for the use of eminent domain or refute any of our attorney’s legal arguments which we shared with the school district in June of 2018 (see Attachment).

Finally, on April 3 of 2019 we were told by the solicitor that the school district has the right to use eminent domain to accomplish a public purpose and that the construction of the elementary school is a public purpose. We agree. But then we were told that the easement is necessary to permit the discharge of stormwater from the school site, as required by the township. Therein lies the rub.

Clearly, the proposed easement is NOT physically necessary to accomplish the public purpose of handling the school district’s stormwater runoff. The school has been discharging its stormwater for more than 70 years without the easement and now the school district proposes to REDUCE its runoff by at least 52%. The fact that the township has required the school district to acquire the easement, in exchange for a permit to build the elementary school, is strictly an artificial “need” that in no way accomplishes a real public purpose.

Furthermore, the school district’s position that the easement is “required by the township” seems to be entirely contradicted by the township’s stated position<sup>3</sup>:

“It is the School District’s plan which proposes the stormwater management improvements that require a drainage easement across the property owned by Mr. & Mrs. Adams at 110 S. Greenwood Avenue. The Township did not demand that the School District’s Plan be designed in this manner, but was required to review and ultimately approve what your Project Engineer had designed. Therefore, as per Section 165-63.O.3 of the Subdivision and Land Development Ordinance (SALDO), it is the responsibility of the School District, as Developer, to acquire the Adams’ easement which is depicted on the Plans.”

As I read it, the township seems to be signaling to the school district this message:

Design and submit an alternative plan that does not require a drainage easement and then we will review and possibly approve it!

Of course I maintain that the evidence is abundantly clear<sup>4</sup> - the stormwater plan approved by the township supervisors is the de facto design of the township and not the stormwater plan desired by the school district.

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<sup>2</sup> Our offer of \$135,000 included responsibility for all restoration costs, estimated to be at least \$20,000, for a net cost to the school district of no more than \$115,000.

<sup>3</sup> Letter of November 30, 2018 from township solicitor to school district solicitor.

<sup>4</sup> We now know from township meeting minutes of November 30, 2017 that the storm pipe on our property, to be constructed by the school district and then “dedicated” to the township, was to be “upsized to handle future flows from an {additional} pipe that the township will install down Lilac {Road}.” The minutes tell us that “the township will pursue obtaining the storm water easement across the Adams’ property including

By approving a land development plan that requires the school district to obtain an unlawful easement, the township has created an unusual situation from which my wife and I could take advantage. With project delays costing \$700,000 per year, it would have been a smart business decision for the school district to pay us \$115,000 or much greater amounts for the easement, but it would not have been the right decision. It is fortunate that some school directors expressed opposition to a “six-figure” settlement at the time.

My wife and I do not wish to be complicit in the township’s scheme. We have no desire to shake down our school district. By refusing to “take the money,” there should no longer be any doubt about our motivations. It has never been about money. It has always been about defending our property rights and stopping the township from taking advantage of the school district.

We believe the township is abusing its power to issue building permits - to the detriment of the taxpayers as well as those residents who desire the construction of a new elementary school in our community. The sentiments expressed by Superintendent Reinhart in his memo to the school board on October 21, 2018 are worth noting:

“I agree with {School Board President} Mr. Chando on this matter. We have been representing ‘the greater good’ for the community and we have not been treated as such by the township or their subordinates. The township has been most disrespectful in causing us to spend thousands of tax-payer dollars on ideas that will help them solve a township problem. We have all tried to contain our frustration at these circumstances by dealing with the township with respect and following their directions in spite of serious questions in their judgement. I cannot imagine another municipal body in the district asking us to jump through such hoops in order to create better community services that will benefit everyone.”

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I wish to draw your attention to one more important point about the stormwater plan that Mr. Colver and the other township supervisors approved on October 23, 2018. Two more questions need to be asked:

1. How severe is the township’s flooding problem and is it worth spending a million dollars to solve?
2. Does the stormwater plan approved by the township actually solve the problem?

The township’s engineer believes that the approved plan will address a flooding problem that Mr. Colver has described as “a longstanding problem that’s been there forever since the development was done 40+ years ago.”<sup>5</sup> But to my knowledge, the township has never shared any data with the public regarding the severity of the problem, e.g. where exactly does flooding occur, how often and how much if any money has the township or its residents spent on property damage? I received no response when I asked these

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condemnation {eminent domain} if necessary,” and that “{Township Supervisor} Dave Colver will pursue the approval on the Adams’ property.”

<sup>5</sup> “This dispute could stall plans for a new Palmer Elementary School for years,” June 18, 2018, Lehigh Valley Live, R. Miller.

questions at the township supervisor's meeting of October 1, 2018. Nevertheless, we can infer that a problem that has persisted for over 40 years without any attention is likely not a SEVERE problem and certainly not a problem worth spending a million dollars to solve – unless of course someone else could be pressured to pay for it.

Regarding the second and much more important question: will the approved stormwater plan actually solve the problem? The answer is an emphatic NO, it will not. All three engineers recognize that the only exit path for ALL of the stormwater runoff in the township's development is PennDOT's undersized culvert underneath Greenwood Avenue. Since there are no plans to increase the capacity of the culvert or construct a second one, there is no way that the proposed drainage system will provide ANY net relief to the flooding problems in my development.

In conclusion, the stormwater plan approved by the township's supervisors is useless to the township's residents. Furthermore, the plan includes an easement for which the school district has no valid public need and therefore no justification for obtaining it through the use of eminent domain. The only people who would benefit from the construction of the proposed stormwater system would be the contractor to whom the job was awarded and the engineer hired by the township to inspect the work.

Contrary to what the solicitor may have told you in executive session, eminent domain is NOT the only option available to the school board at this time. There are several actions that the school district could take that, in my opinion, would dramatically change the dynamics of the situation and most likely break the stalemate. Please work with our new superintendent to put pressure on the elected leaders of the township in an effort to hold them accountable to their constituents:

1. Join our side of the land use appeal that my wife and I filed against the township.
2. Hold a vote on the use of eminent domain to take our land - and vote against it. Take eminent domain off the table once and for all.
3. Withdraw the school district's current land development plan and submit a new plan that does not require an easement on our property or any off-site stormwater infrastructure for the township (see Plan #1 in the Appendix).

As always, thank you for considering my thoughts on this increasingly urgent matter.

Sincerely,

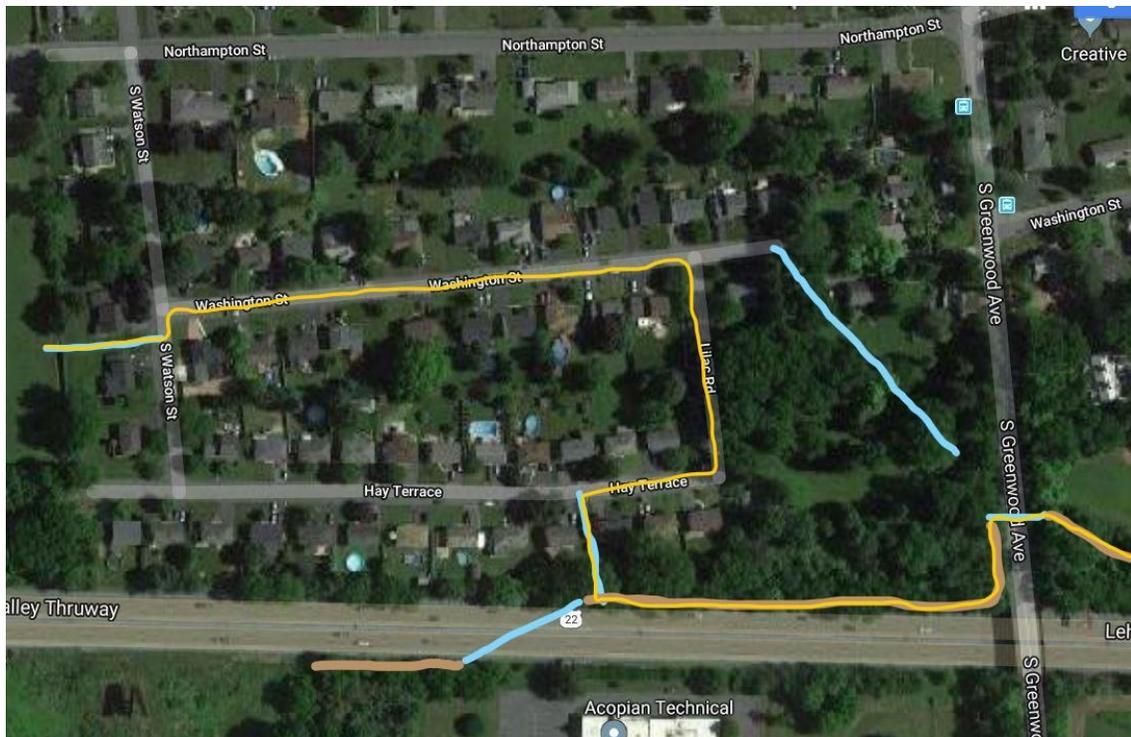
A handwritten signature in black ink, appearing to read "Eric Adams", written in a cursive style.

Eric Adams

cc: Mr. David Piperato, Superintendent

## APPENDIX – Stormwater Management Plans

Stormwater runoff from the elementary school has been managed the same way since the bubbler<sup>6</sup> on S. Watson Street was installed in the early 1990's. A storm drain on the school's property collects stormwater and conveys it through an underground pipe between two homes on S. Watson Street. The outlet of the pipe is connected to the bubbler. Stormwater emerges from the bubbler and flows east down Washington Street, then south down Lilac Road and then west for ~200 feet to the existing storm drain on Hay Terrace. A storm pipe between two homes on Hay Terrace connects the storm drain to an existing natural channel (or swale) that runs along the north side of Route 22. The channel feeds the inlet of the existing culvert underneath Greenwood Avenue. From the culvert the stormwater flows about 1.5 miles to the Bushkill Creek.



**Figure 1. Existing path of school's stormwater (yellow) including existing storm pipes (blue) and existing natural channels (brown).**

There are roughly 400 acres of land on the north and south sides of Route 22 that are tributary to the existing culvert underneath Greenwood Avenue, i.e. ALL of the stormwater that does not get absorbed into the ground eventually flows to the Greenwood culvert. Although the analysis has not been performed by the school district's engineer,

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<sup>6</sup> A bubbler looks like an ordinary storm drain. It is used to convey stormwater, safely, from a lower elevation to a higher elevation.

we can infer that the contribution of stormwater from the elementary school's 23-acre property is a small fraction of the stormwater coming from the surrounding 400 acres – roughly 6%.

The new elementary school project proposes to construct a massive retention basin such that stormwater runoff from the school district's property will be REDUCED by 52% for the worst-case 100-year storm event and 65% for the more common 2-year storm event. Three different plans have been proposed to manage these reduced, post-construction flow rates:

Plan #1 - Use the existing drainage system. This plan was never submitted by the school district and never rejected by the township.

Plan #2 - Furnish and install underneath Hay Terrace a new 24-inch diameter by 800-foot long storm pipe to connect the school's property to the existing storm drain on Hay Terrace. From that point the school's stormwater would follow the same path to the Bushkill Creek as it does today. This plan was proposed and then immediately rejected by both the township and school district engineers.

Plan #3 - Furnish and install underneath Hay Terrace a new 24-inch diameter by 1,000-foot long storm pipe to connect the school's property to a new manhole on Lilac Road (for future connections by the township). Increase the pipe size to 30 inches before continuing another 450 feet on the Adams property. Cut down at least four mature trees and regrade half an acre of lawn to accommodate the new pipe. Install another manway. Then install a 30-foot wide by 40-foot long riprap apron (bed of boulders) on the Adams property to catch stormwater discharged from the outlet of the 30-inch pipe. Finally, hope<sup>7</sup> that some of the stormwater flows into the existing Greenwood culvert, allowing the rest of the stormwater to flood the Adams property. This plan was proposed by the school district and conditionally approved by the township.

#### Why was Plan #1 never submitted?

Plan #1 was never FORMALLY submitted and therefore never formally rejected by the township's engineer. The township's engineer reportedly told the school district's engineer, off the record, that Plan #1 was a "non-starter" – don't even bother. In my opinion, the school district should have submitted the plan anyway. It is not too late to do so now.

Plan #1 does not appear to violate any township ordinances and both the school district's engineer and my engineer support it. If the township's engineer was forced to review the

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<sup>7</sup> The word "hope" is used not to be sarcastic but to emphasize the point that the school district's engineer never estimated the capacity of the Greenwood culvert to determine how much if any flooding would occur on the Adams property. Based on analysis done by my engineer it may be concluded that peak flow rates would reach 580,000 gallons per hour (sufficient to fill an Olympic-size swimming pool in an hour).

plan, I do not know what ordinance(s) he could possibly reference in order to formally reject it.

My engineer's analysis of Plan #1 was submitted to the township in April of 2018. The township engineer never issued a review letter of my engineer's report, but we know that the township's engineering firm charged<sup>8</sup> the school district at least 12 hours of engineering time to do so. Where is the letter?

The township engineer has said that he does not like bubblers, dismissing them as old technology, but he never issued a review letter to explain why Plan #1 would not work or which if any ordinances might be violated. In fact, bubblers are still used today when the topography is such that the use of an open pipe or other means of conveyance is not possible.

Please recall the school board meeting of June 20, 2018 in which a school director expressed interest in simply using the existing stormwater system – at half the flow rate. Could it be done? Everyone in the room, including the school district's engineer, exclaimed "Yes!" and then the school district's engineer told the school board:

"There's no question about all the calculations and everything, it's the fact that Palmer's ordinance says that we have to show downstream conveyance capacity, and that's what we can't because it doesn't exist, so and we've had discussions with the township engineer, we've point blank said, is there anything we can do on our site to avoid this and they said no."

All of the stormwater runoff from the school's property follows a fixed path, consisting of storm pipes and swales, on its way to the Bushkill Creek. To say that there is "downstream conveyance capacity" means that all of the pipes and swales are large enough to handle the stormwater's peak flow rates without flooding any adjacent properties along the way.

Since our development was built in the 1970's, the path between the storm drain on Hay Terrace and the culvert underneath Greenwood Avenue does NOT always provide adequate capacity to prevent flooding and therefore does not "show downstream conveyance capacity." However, this would be the case even if the school's stormwater runoff were somehow reduced to ZERO.

So when the township's engineer requires the school district to show downstream conveyance capacity, he is requiring the school district to do the impossible – just as the school district's engineer explained to the school board on June 20. Therefore we see that none of the three plans, including the plan approved by the township supervisors, can show downstream conveyance capacity.

Clearly the intent of the ordinance is to prevent a developer from constructing larger buildings with more impervious surface and no retention basins without first verifying that there is adequate downstream conveyance capacity to handle a proposed INCREASE

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<sup>8</sup> Pidcock invoice #46038 dated July 5, 2018.

in stormwater runoff. As noted, the school district is proposing to do just the opposite: smaller building, less impervious surface and a massive retention basin to REDUCE stormwater runoff.

### Why was Plan #2 rejected?

We know from engineering review letters that Plan #2 was rejected for two primary reasons:

1. Township engineer claimed that directing the school's stormwater to the storm drain on Hay Terrace would CHANGE its current path in violation of township ordinances.
2. School district engineer claimed that the natural channel along the north side of Route 22 would need to be widened to 40+ feet which would require cutting down too many trees and require additional easements.

In his review letter of October 6, 2017, the township's engineer claims that the school's stormwater does NOT flow to the storm drain on Hay Terrace, but instead "appears to flow down Washington Street where it discharges overland {Adams property} and ultimately to the existing culvert crossing under Greenwood Avenue."

The engineer's conclusion is not correct. In fact, the school's stormwater flows down Lilac Road as documented, including photographs, in my engineer's report. The stormwater flowing overland across my property is stormwater from the township's residential development. This is now acknowledged by all three engineers.

So it is only Plan #3, the plan approved by the township, that changes the path of the school's stormwater – apparently in violation of the township's ordinance.

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In his letter of March 1, 2018, the school district's engineer assumed that the stormwater capacity of the Greenwood culvert is 405 cubic feet per second (CFS). Then he assumed that the capacity of the natural channel along the north side of Route 22 would also need to be 405 CFS. In order to handle 405 CFS, he showed that the width of the natural channel would need to be increased from about 6 feet to at least 40 feet. Such a modification to the existing channel would require easements from five property owners and the cutting down of many trees along the north side of Route 22. This reason was used to reject Plan #2 in favor of Plan #3 which only required one easement and the cutting down of four mature trees.

The engineer's estimate of the capacity of the culvert is not correct – not even close. From the analysis of the Greenwood culvert done by my engineer it can be shown<sup>9</sup> that

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<sup>9</sup> The elevation around the edge of the proposed riprap apron is 328 feet and this contour line is also the boundary line of the proposed easement. When the headwater elevation is 328 feet the flow rate through the culvert is 8.4 CFS. The only way to get more water through the culvert is to increase the headwater elevation. But as soon as the water level rises above 328 feet, the water level must spread beyond the

the capacity of the culvert, without flooding my property, is only 8.4 CFS – not 405 CFS as assumed. Consequently, there would have been no reason to modify the natural channel along the north side of Route 22 and therefore no reason to obtain five easements and cut down trees.

The engineers know better. I suspect that the real reason for rejecting Plan #2 was that it did not include a tie-in point on Lilac Road for the township to connect future stormwater pipes - and thus divert even more stormwater onto my property.

### What is wrong with Plan #3?

Plan #3 should NOT have been approved by the township supervisors for many reasons including:

1. The plan includes an easement on our private property which we maintain is unlawful for reasons provided by our attorney (see Attachment). Since we are no longer willing to sell the easement, it should not be possible for the school district to obtain the easement as required by the township's conditional approval.
2. The proposed stormwater system appears to violate at least four township ordinances as detailed by our engineer in his letter of April 18, 2018 – including an ordinance referenced by the township's engineer to reject Plan #2.
3. The proposed stormwater system does not provide any net relief to the flooding problem in our development because it does not increase the capacity of the existing Greenwood culvert.
4. The proposed stormwater system is estimated to cost about \$1 million dollars compared to ZERO dollars for Plan #1. Since the school district has no need for the proposed system and the system is useless to the township, all of the money will be wasted – diverted away from educational needs.

Attachment - Legal Analysis, M. Faherty, June 19, 2018.

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boundary of the easement - which I define as "flooding" of my property. Therefore, 8.4 CFS is the threshold limit for flooding and thus the capacity of the culvert.